IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

WP(C).No. 10363 of 2006(H)

PETITIONER:

1. **V.P.CHANDRAN, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE DEVAGIRI, CALICUT-8.**
2. **T.MURALI MANOHARAN, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-8.**
3. **M.P.MARY, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-8.**
4. **P.ARAVINDAN, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-8.**
5. **THOMAS ULLACHAL, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-8.**
6. **FREDIE PEREIRA, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-8.**
7. **C.MOHAN KUMAR, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-8.**
8. **C.J.JOJY, LIBRARY ASSISTANT, ST.JOSEPH'S COLLEGE, DEVAGIRI, CALICUT-8.**

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
2. **DIRECTOR OF COLLEGIATE EDUCATION, `VIKAS BHAVAN', P.M.S.JUNCTION, THIRUVANANTHAPURAM.**

ADDITIONAL RESPONDENTS

3. **UNIVERSITY OF CALICUT REP. BY ITS REGISTRAR CALICUT UNIVERSITY (P.O.) THENHIPALAM**

R3 is impleaded vide order dated 9-8-06 in I.A.No.10937/06

BY GOVERNMENT PLEADER SRI.T.T.MUHAMMED
SRI.S.GOPAKUMARAN NAIR, SC, CALICUT UTY
SRI.E.S.ASHRAF, SC, CALICUT UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE GOVT. ORDER DATED 7-11-74 ISSUED BY R1**
EXT.P2	**TRUE COPY OF THE CIRCULAR DATED 5-3-90 ISSUED BY R2**
EXT.P3	**TRUE COPY OF CIRCULAR DATED 8-8-90 ISSUED BY R2.**
EXT.P4	**TRUE COPY OF THE GOVT.ORDER DATED 22-11-94 ISSUED BY R1.**
EXT.P5	**TRUE COPY OF THE ORDER DATED 1-4-05 ISSUED BY R5**
EXT.P6	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS TO THE FIFTH RESPONDENT.**
EXT.P7	**TRUE COPY OF LETTER DATED 16-12-05 SENT BY THE FOURTH RESPONDENT TO THE THIRD RESPONDENT.**
EXT.P8	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE FOURTH RESPONDENT IN RESPECT OF THE PETITIONERS.**
EXT.P9	**TRUE COPY OF THE LETTER DATED 23-2-06 ISSUED BY R3**
EXT.P10	**TRUE COPY OF CIRCULAR DATED 5-7-05 ISSUED BY THE DIRECTOR OF COLLEGIATE EDUCATION OF THE OFFICE OF THE SECOND RESPONDENT.**
EXT.P11	**TRUE COPY OF THE NOTIFICATION DATED 26-2092 PUBLISHED IN KERALA GAZETTE.**
EXT.P12	**TRUE COPY OF PROCEEDINGS DATED 1-5-05 OF THE MANAGER, ST.THOMAS COLLEGE, PALAI**
EXT.P13	**TRUE COPY OF THE PROCEEDINGS DATED 24-6-05 OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, KOTTAYAM**
EXT.P14	**TRUE COPY OF THE PROCEEDINGS DATED 18-5-05**

RESPONDENT'S EXHIBITS

EXT.R3(A)	**TRUE COPY OF THE ORDER DATED 08-12-05**
EXT.R3(B)	**TRUE COPY OF THE ORDER DATED 04-10-1991**
EXT.R3(C)	**TRUE COPY OF THE COMMUNICATION DATED 09-05-05**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.10363 OF 2006

Dated this the 11th day of January, 2007

JUDGMENT

Case of the petitioners in brief is as follows:

Petitioners are appointed as Library Assistants in the fourth respondent college. Ext.P1 is an order of the Government dated 07-11-1974 by which Government declared that the Library staff of Government and Private Arts and Science, Training and Law Colleges will be considered as non-vacation staff. By Ext.P2 dated 05-03-90 the Director ordered that persons working in Departmental Library will be treated as vacation department staff. By Ext.P3, Ext.P2 order stands withdrawn. An expert committee was appointed and report was submitted. Thereafter Government issued Ext.P4 order, which reads as follows:

> " As per the GO read above Government had constituted an Expert Committee to examine the functioning of College Libraries and suggest suitable

> measures for their improved functioning. Accordingly the Committee has submitted its report with various recommendations with a view to usher in modernisation and improvement of facilities.
>
> Government have examined the recommendations in detail and are pleased to order the implementation of the recommendations appended to this GO with immediate effect.
>
> The other recommendations which have financial implication will be considered later on."

2. In the appendix to Ext.P4, Departmental libraries are dealt with . It provides thus:

> "Departmental libraries should be abolished and their collections and staff should be transferred to the central library."

3. Case of the petitioner is that they have been working in General Library as non-vacation staff and were submitting their earned leave and the bills were passed by the third respondent upto 2004 without any objection. The fifth respondent (Manager) vide order dated 01-04-2005 sanctioned 20 days earned leave to the petitioners. It is stated that since the service book of the petitioners 3 and 4 were retained at the office of the third respondent, their leave could not be sanctioned. Ext.P5 is the order sanctioning

leave in respect of petitioners except petitioners 3 and 4. Even though bill was submitted, it is dis-allowed calling for details. Representation was given as Ext.P6 by the petitioners to the fifth respondent. Fourth respondent re-submitted the earned leave surrender bill for 2005 and clarified the position vide Ext.P7. Fourth respondent also issued Ext.P8 certificate in respect of petitioners employment. By Ext.P9, third respondent returned the earned leave surrender bill of the petitioners stating that due to the circular from the second respondent's office, the bills are returned. Ext.P10 is the circular relied on in Ext.P9.

4. Petitioners challenge Exts.P8, P9 and P10. They seek a declaration that they are entitled to earned leave surrender pursuant to Ext.P5 leave sanction order and a direction is sought to the third respondent to counter sign and pass the earned leave surrender salary of the petitioners. The contention of the petitioners is that Ext.P10 is a deviation from Ext.P4. It is stated that it is not in tune with Ext.P4. No order is issued subsequently to Ext.P1 order, it is

submitted. It is submitted that it is arbitrary. Learned counsel for the petitioner places reliance on note 5 under Rule 81 of Part I K.S.R.. Which reads thus:

> " The Library staff or Arts and Science, Training and Law colleges shall be treated as non-vacation staff."

It is therefore contended that as along as the statute holds the field, there cannot be any variation to the same and the petitioners are entitled to be treated as non-vacation staff. It is contended that petitioners are being discriminated and no where in the State there is denial as in the case of petitioner.

5. In the counter affidavit filed on behalf of the third respondent, it is inter-alia stated as follows:

> " The Library Assistants working in eligible posts created by the Government to General Library are treated as non-vacational staff. For example, as per new pattern Order No.E3-48228/2005/Coll.Edn. dated 08-12-2005, which is produced herewith and marked as Ext.R3(a). The second respondent fixed the strength of Library Assistants as three (Three) in the same college. Accordingly the three Library Assistants posted to the posts are treated as non-vacation staff and eligible to enjoy all the benefits of non-vacation staff. The fifth respondent is

> empowered to appoint such employees among from the Lab/Library Assistants. Accordingly, the second respondent will issue approval orders for such appointments. As per Order Estt.E3/35412/91/R.dis dated 04-10-1991, which produced herewith and marked as Ext.R3(b). The second respondent fixed the staff strength as item No.10, Library Attenders as 4 (four) and PG Library Attenders (Departmental) as also 4 (four). The PG Library Attenders are under the immediate control of the Head of Department of the PG Department, who were in the category of the vacation staff and working 5 days in a week, enjoying vacation. All Departments as well as PG Departments remain closed in the vacation."

6. Ext.R3(c) is stated to be the communication issued by the fourth respondent. It is stated that Ext.P7 was not clear. It is stated that Ext.R3(a) fixation of strength of staff would show that there are only three eligible persons working in the category of Library Assistants and 5 are surplus. 8 Attenders are shown as eligible and 20 are shown as existing and therefore it is stated that there are totally 17 posts which are surplus among library assistants and attenders.

7. It is countered by the learned counsel for the petitioner producing a true copy of the last page of Ext.R3(a) to show that

persons are treated as continuing as supernumerary and are entitled to continue till they vacate the post by retirement, death etc. Learned counsel for the petitioner relied on Ext.P11 notification issued by the University re-designating the post of Attenders as Library Assistants.

8. Learned counsel for the petitioner would reiterate the contention in the pleadings and point out that as long as note 5 under Rule 81 of Part I K.S.R. exists, no executive order or circular can be pressed into service. Ext.P1 order makes it clear that Library Assistants are to be treated as non-vacation staff. This is an order issued by the Government. A circular cannot go against the order of the Government. In fact here it is issued by the Director.

9. The contention of the Government is that a committee was constituted. Recommendations were made and they were partly accepted. But in Ext.P4 it is made clear that other recommendations which have financial implication will be

considered later on. Case of the petitioner is that in fact the provision relating to abolition of departmental libraries and transfer to the central library was implemented in the fourth respondent college as it is evident from Ext.P7. A reading of Ext.P4 would clearly show that abolition of the departmental library and transfer of staff and collections to the central library is a matter which is ordered to be implemented as per Ext.P4. Consequent upon the same, as it is evident from Ext.P7 it is implemented in the fourth respondent college and the staff were in fact transferred. Ext.P8 would show that 8 persons, petitioners herein, are working in the General Library without enjoying vacation with effect from the date of their promotion as Library Assistants. 3 out of the 8 alone can be treated as regular staff eligible to be retained. But the fact remains that the 5 persons are supernumerary and they are eligible to continue till they vacate the post. In Ext.R3(a), there is no restriction as to the rights of the persons who are continuing in supernumerary capacity. If that be so, by virtue of Section 78 of

the Calicut University (conditions of service of Teachers and Members of Non-teaching staff) Statutes, 1979, and Note 5 under Rule 81 of Part I K.S.R. referred to herein before will be applicable. As per the same, library staff will be treated as non-vacation staff. Therefore, they will be entitled to the benefit of surrender of earned leave.

10. Government Pleader on instructions submits that there is no order of the Government varying Ext.P1. There is no order providing that persons who are working as Library staff either in supernumerary capacity or in the central library or in the departmental library are to be denied the benefit available to non-vacation staff.

11. In such circumstances, it will be difficult to sustain Ext.P9 and P10. In fact, Ext.P10 says that there is an extra financial burden on the part of the Government which has not been accepted vide Ext.P4. In view of the fact that the matter is governed by statutory provisions and further by the Government

order as already mentioned, it may not be possible for the State to resist the relief sought for by the petitioners to quash Ext.P10 and therefore consequently to quash Ext.P9.

12. In such circumstances, the writ petition is allowed. Exts.P9 and P10 are quashed. There will be a direction to the third respondent to take up the bill presented by the fourth respondent in relation to the petitioners and take appropriate action in accordance with law within a period of six weeks from the date of producing a copy of this judgment.

Writ petition is allowed.

K.M.JOSEPH
JUDGE

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